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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF SACRAMENTO

20
21 Public.Resource.Org., Inc.,

22 Petitioner,

23 vs.

24 California Office of Administrative Law, and
the California Building Standards
25 Commission,

26 Respondents.

Case No. 34-2021-80003612

Second Declaration of Christian Dubay

**Filed In Support of Intervenor's Brief in
Opposition to the Petition for a Writ of
Mandate**

Date: January 21, 2022

Time: 1:30 p.m.

Dept.: 27

Judge: Hon. Steven M. Gevercer

Action Filed: March 17, 2021

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SECOND DECLARATION OF CHRISTIAN DUBAY

I, Christian Dubay, declare as follows:

1. I am the Vice President, Codes & Standards and Chief Engineer for the National Fire Protection Association (“NFPA”). I have been employed by NFPA for 25 years. I previously submitted a declaration in connection with NFPA’s motion to intervene in this matter and have included some of the information from that declaration below for the convenience of the Court. The contents of this declaration are within my personal knowledge or, if they are not, I am informed as to them by individuals with personal knowledge and believe them to be true. If called as a witness in this action, I could and would testify competently to the contents of this declaration.

NFPA and Its Standards Development Process

2. NFPA is a non-profit organization whose mission is to eliminate death, injury, and property and economic loss due to fire, electrical, and related hazards. NFPA was founded in 1896 to address the need for consistent installation standards across industry for fire prevention. Our organization has evolved to develop and publish more than 300 voluntary consensus standards in a wide range of areas, including electrical installation and fire prevention and safety. NFPA’s standards provide guidance, instructions, and best practices to prevent the occurrence of disasters, manage their impact, and protect human life and property.

3. NFPA’s flagship standard, the *National Electrical Code* (“NEC”), is the world’s leading standard for electrical safety. The 2020 edition of the NEC is over 900 pages long, and new editions are released on a three-year cycle. Because of its quality and the confidence of private and public stakeholders in the processes we use to develop it, the NEC provides the benchmark for safe electrical design, installation, and inspection to protect people and property from electrical hazards.

4. NFPA is accredited by the American National Standards Institute (“ANSI”), a non-profit, non-governmental membership organization. ANSI’s mission, as stated on its website, <www.ansi.org>, is to enhance both the global competitiveness of U.S. business and quality of life

1 in the U.S. by promoting and facilitating voluntary consensus standards and conformity
2 assessment systems, and safeguarding the integrity of those standards and systems. I am familiar
3 with ANSI's goals and operations through my work developing NFPA's accredited standards.

4 5. The ANSI accreditation process furthers the public interest by requiring standard
5 development organizations like NFPA to meet openness, balance, consensus, and due process
6 requirements and adhere to ANSI's neutral oversight. To achieve accreditation, an organization's
7 standards development committees must contain balanced membership, taking into account the
8 views of a variety of groups, including technical experts on the subject matter of the standard,
9 consumer representatives, government representatives, and industry representatives. The
10 organization must also maintain open proceedings, provide public notice of standards
11 development activity, allow opportunity for public comment; give consideration and response to
12 public comments; and provide an opportunity to appeal committee decisions.

13 6. As an ANSI-accredited standards developer, NFPA is held to the highest
14 expectations for collecting the best available research and input from a wide variety of
15 stakeholders to produce top-quality standards.

16 7. ANSI further classifies NFPA as an Audited Designator because it submits to more
17 in-depth ANSI auditing of its standards process (even more rigorous than the typical ANSI
18 accreditation).

19 8. I have been familiar with NFPA standards and the NFPA standards development
20 process for more than two decades. Each NFPA standard goes through two full rounds of public
21 and committee input, comments, review, and drafts before being finalized—a roughly two-year
22 process.

23 9. NFPA's Technical Committees are comprised of a wide range of stakeholders and
24 are the principal consensus bodies responsible for the development and revision of the standards.
25 As a general matter, any member of the public may participate in the meetings or provide
26 comments or proposals, which are considered by the Technical Committees. NFPA technical staff
27 assist and advise the Technical Committees, and NFPA technical and editorial staff revise and
28 finalize the wording of the standard. NFPA staff liaisons work together with the Technical

1 Committees to craft wording that accurately captures the intent and purpose of Committee
2 decisions. The technical staff are also responsible for ensuring that revisions to the standard are
3 drafted in a way that maintains technical and editorial consistency across the different sections of
4 the standard. The end result is a highly creative, sophisticated, original work of authorship.

5 10. The final versions of the standard also go through a rigorous quality control process
6 by NFPA staff to ensure that the final document is as accurate as possible. This painstaking
7 review adds additional costs to the standards-development process, but NFPA commits the
8 resources because technical accuracy of NFPA standards is essential for NFPA's mission of
9 promoting public safety.

10 11. For example, creating the first draft report of the 2020 NEC involved consideration
11 of over 3,800 proposed language changes, including those from the public. A total of 515
12 Technical Committee members on 18 Code-Making Panels and a Correlating Committee, who
13 were supported by more than 35 NFPA staff members, held concurrent, multi-day committee
14 meetings for a total of 74 meeting days. The first draft was finalized by a four-day meeting of the
15 Correlating Committee, assisted by three NFPA staff members. The preparation of the second
16 draft report involved consideration of over 1,900 public comments, and 64 Committee meeting
17 days over a two-week period, assisted by at least 35 NFPA staff members. There were two more
18 multi-day Correlating Committee meetings prior to the issuance of the NEC. In addition, there
19 have been numerous conference calls, task group meetings, online seminars, and other interactions
20 among Committee Members and NFPA staff.

21 12. Development of the 2023 NEC is ongoing, with much of it being conducted online
22 due to the pandemic. NFPA was well-prepared to take its rigorous and intensive process online
23 after investing close to \$3 million to ensure that anyone in the world with an internet connection
24 has the ability to provide input.

25 13. NFPA, like other copyright owners, is able to invest in the creation of new works
26 through the revenue from selling and licensing copies of its works. In 2019, NFPA spent more
27 than \$15.3 million on developing and revising its standards. This investment is then recouped
28 through charging the businesses and tradespeople who use the copyrighted standards' content in

1 the course of their work. Historically, sales of NFPA’s copyrighted publications, in particular its
2 copyrighted standards, has accounted for over 70 percent of NFPA’s revenues.

3 14. NFPA’s ability to protect its copyright and generate revenue through licensing and
4 selling its work is crucial to ensuring we can continue to develop and update standards to reflect
5 the state of the art in industry and technology.

6 **Public Access to the California Electrical Code**

7 15. The *California Electrical Code* (“CEC”) incorporates by reference portions of the
8 NEC. The CEC also has California-specific provisions, which are authored by the Building
9 Standards Commission (“BSC”). The California-specific provisions of the CEC include
10 amendments the BSC has made to the NEC. After BSC provides those amendments to NFPA,
11 NFPA does the work to publish and distribute the CEC at no additional charge to BSC. The cost
12 of this work is funded by purchasers of the CEC.

13 16. NFPA owns the copyright to the NEC. Pursuant to agreement, NFPA has granted
14 BSC a license to the NEC to cover the work involved in BSC incorporating portions of the NEC
15 into the CEC. As part of the same agreement, BSC has granted NFPA a license to the California-
16 specific portions of the CEC for NFPA to copy and distribute copies of the entire CEC to members
17 of the public. In NFPA’s experience, the purchasers of such copies are professionals who use the
18 CEC in the conduct of professional services they provide in the State of California.

19 17. Since 2006, NFPA has provided free online access to all its standards.

20 18. Additionally, when state governments plan to incorporate a NFPA standard by
21 reference, NFPA creates a “Free Access Widget” to link from the state’s Web site to the relevant
22 standard.

23 19. NFPA also offers accommodations for those who are visually impaired, and we
24 grant academics and researchers access to reproduce the standards at no cost for reasonable, non-
25 commercial purposes.

26 20. NFPA posts the CEC on its Web site’s “Free Access” Web page for free viewing
27 by anyone who is interested in reading any portion of the CEC. It can also be accessed through a
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1 link on the BSC's Web site: <<https://www.dgs.ca.gov/BSC/Codes>>. NFPA also provides printed
2 copies of the CEC to over 100 specified depository libraries throughout California.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct.

5 Executed on this 27th day of December, 2021, at Raynham, Massachusetts.

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